

Remarks

The specification has been amended to correct some minor grammatical errors and to ensure consistent labeling of reference numerals. Also, formal drawings are being submitted herewith. No new matter is being introduced.

After entry of the subject amendment, claims 26 - 50 are pending in the application with claims 26, 36, and 42 in independent form. More specifically, claims 26 and 27 have been amended and claims 28 - 50 have been added.

Claim 27 stands rejected under 35 U.S.C. § 112 as being indefinite. Claim 27 has been amended as suggested by the Examiner to correct a typographical error such that this rejection is now overcome.

Claims 26 and 27 stand rejected under the doctrine of obviousness-type double patenting based on related U.S. Patent Nos. 6,151,984 and 6,374,695. As noted by the Examiner, a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome this rejection. The claims in the subject application have been substantively amended as is discussed in greater detail below. As such, a terminal disclaimer is not being submitted at this time. However, one can be prepared and filed if necessary.

Applicant advises the Examiner that the parent of the subject application, namely U.S. Patent No. 6,374,695, has been involved in patent litigation. During the course of this litigation, numerous prior art references were uncovered relating to fixed pedal assemblies, adjustable pedal assemblies, and electrical generators. Accompanying this Amendment, under separate cover, is a rather large Information Disclosure Statement (IDS) listing each of these prior art references in compliance with Applicant's duty of disclosure. Applicant apologizes for the length of the IDS and submits that many of these references are irrelevant and/or duplicative. To assist the Examiner, the following is a list of references that are currently believed to be the most relevant;

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| US | 2,860,720 |
| US | 3,319,487 |
| US | 4,870,871 |
| US | 5,241,936 |
| US | 5,385,068 |
| US | 5,408,899 |
| US | 5,416,295 |

US 5,697,260
US 5,819,593
US 5,937,707
US 5,964,125
US 5,996,439
US 6,019,015

FR 2 739 947

1974 Pontiac Grand Ville Owners Manual

To further assist the Examiner, a copy of the French Patent, an English translation of the French Patent, and the 1974 Pontiac Grand Ville Owners Manual are enclosed herewith.

Independent claim 26 has been amended distinguish this claim over the references of record. In addition, independent claims 36 and 42 have been added to highlight additional unique aspects of the subject invention that are likewise distinguishable over the prior art references of record.

The prior art of record is replete with examples of adjustable pedal assemblies without electrical generators, fixed pedal assemblies with electrical generators, and even adjustable pedal assemblies with electrical generators. However, the prior art of record fails to disclose, teach, or suggest the unique structure of the subject invention as now claimed in each of the independent claims. In particular, the prior art fails to disclose the novel and non-obvious combination of an adjustable pedal assembly having:

- a pedal pivotally supported about a first pivot axis,
- an adjustment element pivotally supported about a second pivot axis,
- the first pivot axis supporting the pedal on the adjustment element,
- the adjustment element selectively moving the pedal between a plurality of operable positions without pivotally rotating the pedal about the first pivot axis,
- the second pivot axis of the adjustment element remaining fixed during the movement of the pedal between the operable positions,
- an electrical generator (or electric output control) responsive to rotation of the pedal as the pedal rotates between rest and applied positions, and
- the rotation of the pedal between the rest and applied positions being independent of the movement of the pedal between the operable positions by the adjustment element.

The unique adjustable pedal assembly outlined above, and more specifically claimed in independent claims 26, 36, and 42, is not found nor taught by the prior art of record. The structures of the prior art adjustable pedal assemblies with electrical generators, such as those found in U.S. Patent Nos. 5,697,260; 5,819,593; 5,937,707; 5,964,125; and French Patent No. 2 739 947, are substantially different and, in some respects, inferior to the structure claimed in the subject invention.

For example, the French Patent includes an adjustment element 90 pivotally supported by a pin 94, which defines a second pivot axis¹. The pin 94 and second pivot axis slide within an arcuate slot 96 during the adjustment of the adjustment element 90. The movement of the second pivot axis during this adjustment creates a sloppy and unstable design that is inferior to the design of the subject invention.

The subject invention, as claimed, requires that the second pivot axis remain fixed during the pivotal movement of the adjustment element. This configuration creates a compact and stable design for the rotationally adjustable pedal assembly. To modify the structures of the prior art, including the French Patent, to a design similar to that of the subject invention would require a complete re-engineering and re-design of the prior art assemblies. Hence, the subject invention cannot be considered obvious in light of the adjustable pedal assemblies with electrical generators, such as the French patent.

Further, other prior art adjustable pedal assemblies, such as those found in U.S. Patent Nos. 2,860,720; 3,319,487; 4,870,871; 5,996,439; 6,019,015 and the 1974 Pontiac Grand Ville Owners Manual do not disclose or suggest the incorporation of an electrical generator. Combining the cited references in an attempt to find the limitations set forth in independent claims 26, 36, and 42 would require a significant and improper modification of the references and/or an improper motivation to combine.

For example, the '720 Patent includes an adjustment element 42 for moving the pedals 60 between operative positions (shown in phantom and solid lines in Figure 2). However, the '720 Patent requires that both the accelerator and brake pedals 60 pivot about a first pivot axis 64 during the adjustment of the pedals 60. If the pedals 60 were not

¹ It is noted that the pin 104 and/or the shaft 64 may also pivotally support the adjustment element 90. In either case, the analysis and operation of the French Patent discussed herein is the same.

allowed to pivot, then the pedals 60 would actuate respective actuation rods 66, which in turn would actuate a throttle control and a braking device of the vehicle. In other words, the vehicle would either accelerate, brake, or do both during the adjustment of the pedals 60 if the pedals 60 were not allowed to pivot. Positioning an electrical generator to be responsive to one or more of the pedals 60 would render the adjustable pedal assembly of the '720 Patent wholly inoperative. Specifically, the electrical generators would sense the required pivoting of the pedals 60 during the adjustment of the pedals 60 between the operative positions. Hence, the vehicle would accelerate, brake, or both during the adjustment of the pedals 60.

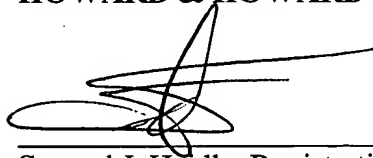
The subject invention, as claimed, requires that an adjustment element move a pedal between a plurality of operable positions without pivotally rotating the pedal about a first pivot axis. Also, the independent claims require that the movement of the pedal between operable positions by the adjustment element be independent of the rotation of the pedal between rest and applied positions. As such, the electrical generator of the subject invention does not sense any rotation of the pedal about the first pivot axis during the adjustment of the pedal about the second pivot axis. This creates a novel and non-obvious design improvement that is not found or suggested by the prior art of record. As such, the invention, as now claimed, is believed to be novel and non-obvious over the adjustable pedal assemblies without electrical generators either alone or in combination with any of the other cited references.

As a final matter, each of the prior art references cited to the Examiner have been reviewed and the Applicant contends that none of these references, either independently or in combination, disclose or suggest of the unique and non-obvious assemblies of claims 26, 36, and 42. As such, these claims are believed allowable. Claims 27-35, 37-41, and 43-50 are also believed allowable as these claims depend from independent claims 26, 36, and 42, respectively.

Accordingly, it is respectfully submitted that the Application, as amended, is now presented in condition for allowance, which allowance is respectfully solicited. The Commissioner is authorized to charge our Deposit Account No. 08-2789 for any fees or credit the account for any overpayment.

Respectfully submitted,

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CERTIFICATE OF MAILING BY "EXPRESS MAIL"

I hereby certify that the enclosed **Amendment**, is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope as "Express Mail Post Office to Addressee", **Mailing Label No. EL 993 944 999 US** and addressed to **Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**, on **September 24, 2003**.


Brenda J. Hughes